

**Office of the Special Trustee for American Indians**  
**Contingency Plan in the Event of Lapsed Appropriations**  
**September 2017**

The Office of the Special Trustee for American Indians (OST) has developed this Contingency Plan in the event of an absence of appropriations as required by OMB Circular A-11 (Circular), and in accordance with the Anti-Deficiency Act, 31 U.S.C. 1341-1342, the Comptroller General's opinion of March 3, 1980, and the Attorney General's opinions of April 25, 1980, and January 16, 1981. This plan identifies excepted activities which will continue during the shutdown. It is expected that the shutdown process itself will be completed in less than one day.

**I. EXECUTIVE SUMMARY**

The OST provides fiduciary guidance, management, and leadership for Tribal Trust and Individual Indian Money (IIM) accounts. The OST oversees and coordinates the Department of the Interior's (Interior) trust reform efforts to ensure the establishment of consistent policies, procedures, systems, and practices throughout Interior for the Indian fiduciary trust. The OST has also programmatic responsibilities for the management of financial trust assets, trust property appraisals, and fiduciary trust beneficiary services. The OST manages and discharges the Secretary of the Interior's trust responsibility for nearly \$5 billion in trust assets for American Indians and Alaska Natives.

Indian trust consists of 55 million surface acres and 57 million acres of subsurface mineral estates held in trust by the United States for American Indians, Indian tribes and Alaska Natives. Over 11 million acres belong to individual Indians and nearly 44 million acres are held in trust for Indian tribes. On these lands, Interior manages more than 124,300 leases. It also manages approximately \$4.9 billion in trust funds. For fiscal year 2015, funds from leases, use permits, settlement and judgments, land sales, and income from financial assets, totaling approximately \$5 billion were collected for about 400,000 open IIM accounts. Approximately \$1.7 billion was collected in fiscal year 2015 for about 300,000 IIM and tribal accounts.

Unlike most commercial trusts, there was no trust document that created the Indian trust and articulated the fiduciary duties incumbent on the federal government in managing that trust. Instead the Indian trust gradually evolved from a series of Congressional actions-beginning with the General Allotment Act of 1887 ("Dawes Act") and subsequent policy changes. This unusual history created uncertainties about how trust was to be managed, and about the very nature of the Indian trust whether it was more like common law trust or more like a government program. These ambiguities were gradually, if incompletely, resolved by case law, then finally by enactment of the American Indian Trust Fund Management Reform Act of 1994 (P.L. 103-412).

In December 2012, the Secretary of the Interior established the LBBP, in the Office of the Secretary, to implement the land consolidation aspects of the IIM Account Litigation Settlement (Settlement), formerly referred to as the *Cobell v. Salazar* lawsuit. The Settlement provides \$1.9 billion for a Trust Land Consolidation Fund for Interior to acquire fractional interests in trust or restricted land within ten years, at fair market value, from willing individual Indian sellers.

OST's Office of Appraisal Services (OAS) has established a reimbursable support agreement with the LBBP to complete the appraisals of the fractionated interests. Several positions funded by the LBBP are conducting this work and are considered exempt.

In the event funding is not enacted, the OST shall prepare for a lapse in appropriations and as such, has established an OST Contingency Plan for essential operations. The contingency plan establishes procedures and identifies resources legally required to continue OST functions during a possible government-wide shutdown. The plan addresses identification of both excepted and exempt employees and their responsibilities, including definition of operations at a minimum level.

The Principal Deputy Special Trustee is responsible for implementing and adjusting the Contingency Plan to respond to the length of the lapse in appropriations and changes in external circumstances.

Key components include those excepted employees necessary for the operation of systems vital to conducting fiduciary trust business and providing service to beneficiaries, and the level of support necessary from information technology, administration, and contractors. The exempt employees include those funded from the Settlement Fund to appraise fractioned interest in land.

#### **A. OST'S ACTIVITIES DURING GOVERNMENT SHUTDOWN**

Pursuant to the plan, only activities involving the safety of human life or the protection of property and necessary operations of systems vital to continued fiduciary trust services to beneficiaries will continue. Specifically, OST will:

1. Protect the safety and well-being of employees and contractors as well as the security of our offices and property;
2. Minimize excepted functions and determine the level at which they would operate;
3. Ensure continued leadership within OST;
4. Continue providing valuation services to the LBBP, specifically exempt employees;
5. Continue to litigate lawsuits where a continuance has not been granted; examine new charges to determine whether prompt judicial action is necessary to protect the federal government's interest in tribal trust litigation cases and, if appropriate, provide litigation support to obtain preliminary relief, and;
6. Perform necessary administrative support to carry out those excepted functions. The bulk of these activities would be handled by staff in the Albuquerque and field offices.

OST critical functions include the receipt, investment, and disbursement of trust funds to Indian beneficiaries. The minimal level of functionality required to accomplish this activity include excepted staff that:

1. Maintain system integrity and operability

2. Ensure proper function of interfaces with Trust Asset and Accounting Management System and Trust Fund Accounting System
3. Approve Transactions
4. Encode transactions
5. Operate the Trust Beneficiary Call Center
6. Continue document imaging and coding to meet discovery deadlines in ongoing litigation
7. Continue efforts related to the Cobell settlement claimant and class member database

#### Contracts

The OST will comply with all guidance provided from Interior, Office of Acquisition and Property Management in conjunction with the DOI Interior Business Center, Acquisition Services Directorate with regard to contractors supporting critical OST functions.

### **B. OST ACTIVITIES THAT WILL NOT OCCUR DURING A GOVERNMENT SHUTDOWN**

The following activities will not occur during a government shutdown:

1. Staff will not be available to answer questions from the public, or respond to correspondence from the public.
2. Insofar as the courts grant OST's requests for extensions of time, OST will not provide litigation support services for tribal trust litigation cases to the Department of the Interior's Solicitors Office and the Department of Justice.
3. Outreach and educational events will be cancelled.
4. No FOIA requests will be processed.
5. No real estate appraisals and appraisal reviews will be performed to support BIA and OHA real estate and probate transactions.

## **II. OST STAFFING**

Section 124 of the Circular requires that agencies submit plans for an orderly shutdown in the event of a lapse in appropriations to OMB. The Circular requires agencies include the number of employees to be retained under the plan in the following three (3) categories of employees:

1. Employees engaged in military, law enforcement, or direct provision of health care activities – OST would retain 0 employees.
2. Employees whose compensation is financed by a resource other than annual appropriations – OST would retain 80 employees.
3. Employees who will protect life and property – OST would retain 38 employees and contract personnel, many part-time or on-call.

To effectively shut down OST operations, the OST shall retain a very limited number of employees under the second and third categories to continue the LBBP operations, because the source of the LBBP funding is not appropriated annually, and to protect government and individual property rights (the emergency exception).

Shut down personnel may only work on shutting down OST and must leave the workplace when their shutdown responsibilities are completed. Shut down responsibilities include, among other things, placing messages about the government shutdown on voicemail and email accounts, canceling meetings and travel plans, requesting extensions in litigation, identifying excepted personnel and their functions, and posting a notice on the website explaining the shutdown and OST's retained functions.

The OST excepted and exempt personnel list indicates staff required to report to duty from the start/initial (I) or to be "On-Call" (OC). OST has a total of eighty (80) exempt and excepted staff that are required to be at work while thirty-eight (38) staff are "On-Call". Of the eighty (80), thirty-six (36) are OST employees and forty-four (44) are LBBP employees.

		<b>TOTAL NUMBER OF OST EMPLOYEES (AS OF 07/2017)</b>	<b>FURLOUGHED (INCLUDES ON- CALL EXCEPTED – 38)</b>	<b>INITIAL EXEMPT*</b>	<b>INITIAL EXCEPTED*</b>	<b>ON-CALL EXCEPTED &amp; FURLOUGHED*</b>
<b>EXECUTIVE</b>					<b>3</b>	<b>2</b>
<b>BUSINESS MANAGEMENT</b>					<b>10</b>	<b>6</b>
<b>HUMAN RESOURCES</b>					<b>2</b>	
<b>FIELD OPERATIONS</b>				<b>4</b>	<b>3</b>	<b>12</b>
<b>OAS</b>				<b>1</b>		
<b>OAS LBBP</b>				<b>39</b>		
<b>TRUST SERVICES</b>					<b>18</b>	<b>17</b>
<b>OHTA</b>						<b>1</b>
	<b>TOTAL</b>	<b>597</b>	<b>517</b>	<b>44</b>	<b>36</b>	<b>38</b>

*\*PLEASE SEE APPENDIX A FOR LISTING OF OST EMPLOYEES*

### **III. OST CONTINGENCY PLAN COVERAGE**

The OST Contingency Plan covers all OST officers, employees and on-site contract personnel; except those noted below. All activities of OST are subject to shutdown provisions when invoked, except as noted below.

Exceptions:

In the event of lapsed appropriations, the OST is to prepare for an orderly shutdown by releasing through furlough all employees except for the following:

1. Presidential appointees, who are not subject to furlough provisions;
2. Employees and contract personnel engaged in shutdown activities. (Unless designated to perform excepted functions in accordance with Section II.A., these employees and contract personnel are to be furloughed at the conclusion of their respective shutdown activities.)

3. Employees and contract personnel designated by OST Deputy Special Trustees and/Equivalents (DST/Es) to perform OST critical functions. (Such employees are authorized to work only for that period of time in which they are performing excepted activities.)

#### **IV. OST CONTINGENCY PLAN CORE TEAM**

The OST Principal Deputy Special Trustee provides oversight and responsibility for implementing and adjusting the Contingency Plan to respond to the length of the lapse in appropriations and changes in external circumstances. OST's Chief of Staff serves as the Team Lead for the Contingency Plan Core Team.

#### **V. OST COMMUNICATIONS**

With regard to a projected shutdown and in the event of lapsed appropriations, the OST will keep employees fully informed of developments, as known, that affect the status of their employment. If shutdown is unavoidable, the OST will follow this Contingency Plan in preparing for an orderly suspension of the OST operations and the maintenance of excepted functions. In accordance with OMB Frequently Asked Questions (FAQ) documents issued in April 2011 and December 2011, Agencies should make every effort to prepare in advance of a lapse so that orderly shutdown activities are minimized.

Twenty-four (24) hours prior, OST will:

- Advise all employees and contractors of any developments and final guidance provided by OMB.
- Prepare and distribute furlough letters and supplementary information to DST/Es, division chiefs, branch chiefs, and managers or their designees.
- Advise all employees and on-site contract personnel to report to duty the next business day after the shutdown for instructions and to engage in shutdown activities. It is anticipated that the majority of OST employees will complete their shutdown responsibilities in four (4) hours or less, but a small number of employees may require eight (8) to sixteen (16) hours. Furloughed employees will need to provide necessary notices and contact information, secure their files, complete time and attendance records, and otherwise make preparations to preserve their work.
- Determine which contracts may continue to operate and notify contractors of their status during the shutdown. OST will comply with all guidance provided from Interior, Office of Acquisition and Property Management in conjunction with the DOI Interior Business Center, Acquisition Services Directorate with regard to contractors supporting critical OST functions.
- Supervisors will request from their employees, and employees may voluntarily provide contact phone numbers and/or email addresses for internal communication purposes only. This information is subject to Privacy Act laws and regulations.
- Inform all OST employees to monitor local and national news reports via television, radio and newspaper for federal appropriation updates and when employees must return to work.

- Advise all employees that furloughed employees are prohibited from performing work outside of the office, including the use of mobile devices or remote computer connections. Further, the OST will not rely on using mobile devices or home access to work emails for providing notices of when to return to work. Subject to the supervisor's discretion, he/she may direct their employees to turn in their mobile devices until they return to the office.

## **VI. OST TRAVEL**

With respect to temporary duty travel away from their normal duty station at the time of the appropriation lapse, the OST will determine and apply reasonableness and practicability based on the length of the assignment and the time required for return travel, compared to the anticipated length of the lapse, so as to minimize the burden.

## **VII. AUTHORITIES**

The American Indian Trust Fund Management Reform Act of 1994 (Pub. L. 103-412) requires the Secretary of Interior to account for the daily and annual balances of Indian Trust Funds deposited or invested.

Section 103 of the American Indian Trust Fund Management Reform Act of 1994 (Pub. L. 103-412, Title I, Sec. 102, Oct. 25, 1994, 108 Stat 4240) requires the investment of individual Indian monies and deposit of interest in the individual Indian trust accounts.

Positions required to meet the requirements of the American Indian Trust Fund Management Reform Act of 1994 (Pub. L. 103-412, Title I, Sec. 102, Oct. 25, 1994, 108 Stat 4240) are identified as excepted. Carryover funds, when apportioned, will be used to fund these positions in the event of a Government shutdown.

The Cobell settlement, approved on November 24, 2012, provides \$1.9 billion for a Trust Land Consolidation Fund (Fund). The settlement charges the U.S. Department of the Interior with the responsibility to use the Fund within a 10-year period to acquire, at fair market value as defined in the Indian Land Consolidation Act. The overall goal of the Cobell Land Buy-Back Program is to reduce the number of fractional interests through individually-owned Indian land transfers to tribes. Positions located within the Office of the Special Trustee's, Office of Appraisal Services are required to provide fair market values of tracts /parcels to support acquisition of undivided fractionated interests to meet the requirements of the Cobell Settlement and therefore are identified as exempt. Reimbursable funding provided the Land Buy-Back Program will be used to fund these positions in the event of a Government shutdown.